

willingness to work things out whenever possible as he has demonstrated throughout his career up to this point.

He has already had experience on a commission that required him to demonstrate that kind of judicial temperament. He handled his assignment there in such a way as to win him the endorsement of Democrats as well as Republicans.

I know there is some controversy surrounding him because he is the Governor's chief of staff. There are many people who, looking at the things he has done in his loyalty to the Governor, have said: Well, his opinions are not acceptable to us.

They have been critical of him. They do not know the man if they maintain that criticism because he will never depart from his conviction that the law comes first. He has demonstrated loyalty to those who have appointed him. But he has also demonstrated a capacity to handle the law and handle the regulations that he is charged with enforcing in a way that will make all Americans proud.

I am happy to join my senior colleague in endorsing the nomination of Ted Stewart for the Federal bench. I look forward with great enthusiasm to voting for him tomorrow.

I am grateful to the senior Senator from Vermont for his announcement that he, too, will vote for Ted Stewart. I hope, with both the chairman and the ranking member of the Judiciary Committee solidly in Judge Stewart's behalf, that we will have an overwhelmingly positive vote for him.

NOMINATIONS OF RAY FISHER, MARSHA BERZON, AND RICHARD PAEZ

Mrs. FEINSTEIN. Mr. President, I want to first thank our minority leader for all of his effort in bringing public attention to the plight of pending judicial nominees.

Thanks to Senator DASCHLE's efforts, we have made some progress. Jim Lorenz, a fine California attorney who served seven years on my judicial selection committee, was confirmed on Friday along with Victor Marrero of New York.

Jim Lorenz's confirmation will help address a desperate shortage of judges in the Southern District of California. I have spoken several times with Marilyn Huff, Chief Judge of the Southern District of California, about the District's caseload crisis.

A recent judicial survey ranked the Southern District as the most overburdened court in the country. The weighted average caseload in the Southern District is 1,006 cases per judge, more than twice the national average.

It is also a significant step forward for the Senate that we will have a vote tomorrow on Associate Attorney General, Ray Fisher, to be a Circuit Judge on the Ninth Circuit Court of Appeal.

Ray Fisher is an extraordinary nominee who will add some support to the

skeleton crew of judges currently presiding on the Ninth Circuit.

Currently, the Ninth Circuit has seven vacancies, which is 25 percent of the total judgeship positions on the circuit.

Each one of these judicial vacancies qualifies as a judicial emergency. The Chief Judge of the Ninth Circuit reports that the Circuit could handle 750 more cases right now if the vacancies were filled.

Prior to his appointment as Associate Attorney General, Ray Fisher was considered one of the top trial lawyers in Southern California. His legal skills are so highly regarded that he recently was inducted into the American College of Trial Lawyers, an honor bestowed on only the top one percent of the profession.

During his 30 year career in private practice, Ray Fisher specialized in the toughest of cases, complex civil litigation, and in alternate dispute resolution. In 1988, he founded the Los Angeles Office of Heller Ehrman, White and McAuliffe, an office that has grown from 6 attorneys to 48.

The Standing Committee on Federal Judiciary of the American Bar Association has deemed Mr. Fisher "Well Qualified" for appointment as Judge of the United States Court of Appeals.

Ray Fisher graduated from Stanford Law School in 1966, where he was president of The Stanford Law Review and awarded the Order of the Coif. Following law school, he served as a law clerk for Judge J. Skelley Wright of United States Court of Appeals for the District of Columbia Circuit and Supreme Court Justice William Brennan.

I am confident Ray Fisher's acute interest in public service, specifically in public safety, and his overarching concern for fairness will serve the Ninth Circuit well.

However, I am disappointed that the Senate could not confirm other pending Ninth Circuit nominees. Ray Fisher is a start, but six vacancies remain on the Ninth Circuit Court of Appeals.

Two of those vacancies should be filled by Marsha Berzon and Judge Richard Paez.

It is a disturbing fact that women and minority nominees are having a difficult time getting confirmed by the Senate.

A report by the independent, bipartisan group Citizens for Independent Courts released last week found that during the 105th Congress, the average time between nomination and confirmation for male nominees was 184 days, while for women it was 249 days—a full 2 months longer.

This disturbing trend continues this year. Women and minorities constitute over 55 percent of the President's nominees in 1999; by contrast, only 41 percent of the nominees confirmed this year by the Senate are women or minorities.

All we have ever asked for Marsha Berzon and Richard Paez is that both nominees get an up-or-down vote. If a

Senator has a problem with particular nominees, he or she should vote against them. But a nominee should not be held up interminably by a handful of Senators.

Let me assure my colleagues, this does not mark the end of a fight. At some point, legislation is not going to move until Marsha Berzon and Judge Richard Paez get an up-or-down vote. Let me take a moment to discuss the nominations process that these two nominees have experienced.

Judge Richard Paez, the first Mexican-American District judge in Los Angeles, was nominated on January 25, 1996—almost four years ago. He still hasn't made it to the Senate Floor for a vote. Any problem with his nomination can't be with his legal background.

He has 17 years of judicial experience. The American Bar Association found him to be "well-qualified." He is also strongly supported by the legal community in Los Angeles including Gil Garcetti, the District Attorney, the Los Angeles County Police Chiefs' Association and the Association for Los Angeles Deputy Sheriffs. Judge Paez has described this interminable nominations process as a "cloud" hanging over his head. Litigants in his court constantly query him if the case is going to be continued, if his case is going to be assigned to someone else, or if Judge Paez is going to keep it. No nominee should have to face this uncertainty. His family has been thrust into the public limelight, and for four years every action he has taken has been subject to microscopic scrutiny.

Marsha Berzon was nominated almost a year and a half ago. She had her first hearing on July 30, 1998, and a second hearing in June 1999. Only in July 1999 was she reported out of committee and her nomination is pending before the Senate. Nationally renowned appellate attorney with over 20 years of appellate practice, she clerked for Supreme Court Justice Brennan and U.S. Court of Appeals Judge James Browning. She graduated Order of the Coif from Boalt Hall, has the support of law enforcement including the National Association of Police Organizations (NAPO) and the International Union of Police Organizations, has strong bipartisan support including former Idaho Senator James McClure and former EPA Administrator William D. Ruckelshaus.

The slow pace of this nomination has caused an incredible burden on Marsha Berzon both personally and professionally. Due to uncertainty over her future, she has significantly curtailed her private practice, and no longer is representing clients before the Supreme Court or the Ninth Circuit.

Chief Justice Rehnquist recently said that "[t]he Senate is surely under no obligation to confirm any particular nominee, but after the necessary time for inquiry it should vote him up or vote him down."

Richard Paez and Marsha Berzon do not deserve to have their distinguished

careers and personal lives held in limbo. Our institutional integrity requires an up-or-down vote.

Until Marsha Berzon and Richard Paez get votes, this nominations process will remain tainted.

I assure my colleagues in the Senate that the nominations of Marsha Berzon and Richard Paez will not fade away. We will keep pressing for these nominees until they get the vote they deserve.

• Mr. HATCH. Mr. President, it is a great pleasure for me to support—on the Senate floor—the confirmation of a judicial candidate who is the epitome of good character, broad experience, and a judicious temperament.

First, however, I think it appropriate that I spend a moment to acknowledge the minority for relenting in what I consider to have been an ill-conceived gambit to politicize the judicial confirmations process. My colleagues appear to have made history on September 21 by preventing the invocation of cloture for the first time ever on a district judge's nomination.

This was—and still is—gravely disappointing to me. In a body whose best moments have been those in which statesmanship triumphs over partisanship, this unfortunate statistic does not make for a proud legacy.

My colleagues—who were motivated by the legitimate goal of gaining votes on two particular nominees—pursued a short term offensive which failed to accomplish their objective and risked long-term peril for the nation's judiciary. There now exists on the books a fresh precedent to filibuster judicial nominees whose nominations either political party disagrees with.

I have always, and consistently, taken the position that the Senate must address the qualifications of a judicial nominee by a majority vote, and that the 41 votes necessary to defeat cloture are no substitute for the democratic and constitutional principles that underlie this body's majoritarian premise for confirmation to our federal judiciary.

But now the Senate is moving forward with the nomination of Ted Stewart. I think some of my colleagues realized they had erred in drawing lines in the sand, and that their position threatened to do lasting damage to the Senate's confirmation process, the integrity of the institution, and the judicial branch.

The record of the Judiciary Committee in processing nominees is a good one. I believe the Senate realized that the Committee will continue to hold hearings on those judicial nominees who are qualified, have appropriate judicial temperament, and who respect the rule of law. I had assured my colleagues of this before we reached this temporary impasse and I reiterate this commitment today.

This is not a time for partisan declarations of victory, but I am pleased that my colleagues revisited their decision to hold up the nomination. We are

proceeding with a vote on the merits of Ted Stewart's nomination, and we will then proceed upon an arranged schedule to vote on other nominees in precisely the way that was proposed prior to the filibuster vote.

Ultimately, it is my hope for us, as an institution, that instead of signaling a trend, the last two weeks will instead look more like an aberration that was quickly corrected. I look forward to moving ahead to perform our constitutional obligation of providing advice and consent to the President's judicial nominees.

And now, I would like to turn our attention to the merits of Ted Stewart's nomination. I have known Ted Stewart for many years. I have long respected his integrity, his commitment to public service, and his judgment. And I am pleased that President Clinton saw fit to nominate this fine man for a seat on the United States District Court for the District of Utah.

Mr. Stewart received his law degree from the University of Utah School of Law and his undergraduate degree from Utah State University. He worked as a practicing lawyer in Salt Lake City for six years. And he served as trial counsel with the Judge Advocate General in the Utah National Guard.

In 1981, Mr. Stewart came to Washington to work with Congressman JIM HANSEN. His practical legal experience served him well on Capitol Hill, where he was intimately involved in the drafting of legislation.

Mr. Stewart's outstanding record in private practice and in the legislative branch earned him an appointment to the Utah Public Service Commission in 1985. For 7 years, he served in a quasi-judicial capacity on the commission, conducting hearings, receiving evidence, and rendering decisions with findings of fact and conclusions of law.

Mr. Stewart then brought his experience as a practicing lawyer, as a legislative aide, and as a quasi-judicial officer, to the executive branch in state government. Beginning in 1992, he served as Executive Director of the Utah Departments of Commerce and Natural Resources. And since 1998, Mr. Stewart has served as the chief of staff of Governor Mike Leavitt.

Throughout Mr. Stewart's career, in private practice, in the legislative branch, in the executive branch and as a quasi-judicial officer, he has earned the respect of those who have worked for him, those who have worked with him, and those who were affected by his decisions. And a large number of people from all walks of life and both sides of the political aisle have written letters supporting Mr. Stewart's nomination.

James Jenkins, former president of the Utah State Bar, wrote, "Ted's reputation for good character and industry and his temperament of fairness, objectivity, courtesy, and patience [are] without blemish."

Utah State Senator, Mike Dmitrich, one of many Democrats supporting this

nomination, wrote, "[Mr. Stewart] has always been fair and deliberate and shown the moderation and thoughtfulness that the judiciary requires."

And I understand that the American Bar Association has concluded that Ted Stewart meets the qualifications for appointment to the federal district court. This sentiment is strongly shared by many in Utah, including the recent president of the Utah State Bar. For these reasons, Mr. Stewart was approved for confirmation to the bench by an overwhelming majority vote of the Judiciary Committee.

To those who would contend Mr. Stewart has taken so-called anti-environmental positions, I say: look more carefully at his record. Mr. Stewart was the director of Utah's Department of Natural Resources for 5 years, and the fact is that his whole record has earned the respect and support of many local environmental groups.

Indeed, for his actions in protecting reserve water rights in Zion National Park, Mr. Stewart was enthusiastically praised by this administration's Secretary of the Interior.

And consider the encomiums from the following persons hailing from Utah's environmental community:

R.G. Valentine, of the Utah Wetlands Foundation, wrote, "Mr. Stewart's judgment and judicial evaluation of any project or issue has been one of unbiased and balanced results."

And Don Peay, of the conservation group Sportsmen for Fish and Wildlife, wrote, "I have nothing but respect for a man who is honest, fair, considerate, and extremely capable."

Indeed, far from criticism, Mr. Stewart deserves praise for his major accomplishments in protecting the environment.

Ultimately, the legion of letters and testaments in support of Mr. Stewart's nomination reflects the balanced and fair judgment that he has exhibited over his long and distinguished career. Those who know Ted Stewart know he will continue to serve the public well.

On a final note, Ted Stewart is needed in Utah. The seat he will be taking has been vacant since 1997. So, I am deeply gratified that the Senate is now considering Mr. Stewart for confirmation.●

LEGISLATIVE SESSION

Mr. BENNETT. Mr. President, I ask unanimous consent that the Senate resume legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senate resumed legislative session.

MORNING BUSINESS

Mr. BENNETT. Mr. President, I ask unanimous consent that there be a period of morning business with Senators to speak for up to 5 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.